

7-31-06

JF 2616

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Commissioner For Patents
Attn: Examiner Blanche Wong, Art Group 2616
P. O. Box 1450
Alexandria, VA 22313-1450



Jul. 28th, 2006

Re: Application 09/878,789 Agee et al.

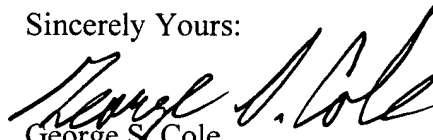
Dear Examiner Wong:

Enclosed is the copy of your First Office Action of 05/02/06 for the above-numbered patent application, and the Response thereto.

I wish to express my gratitude for your efforts as the examination process has, I feel, greatly strengthened the application. I recognize it deals with an extremely complex mix of novel technology, systemic complexity, and signal-processing density, thus requiring several of the claims to be extensively detailed even as they are densely symbolized.

I hope that this Response, and these claims, will now be approved; and, if you want the MS Word files of either or both of the Specification and Claims Listing, or anything else to assist you in your task, please let me know and I will be glad to send such by email.

Sincerely Yours:


George S. Cole
PTO Reg. # 40,563

GSC/ms

In Re Application Of: Brian G. Agee et al.
Serial No. ~~09/787,789~~ 09/878,789
Filed: 06/10/2001
For: Method and Appara...

Examiner: Blanche Wong
Group Art Unit: 2616
Atty. Docket No:
Date: Jul. 28th, 2006

THE COMMISSIONER OF PATENTS AND TRADEMARKS

Washington, D.C. 20231

SIR: Transmitted herewith are:

☒ a Response to the Office Action for the above application.

☒ a claims listing and claims status, in compliance with 37 CFR 1.21

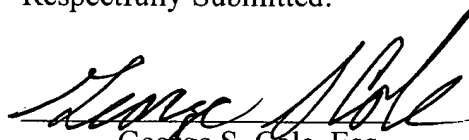
☒ The Commissioner is herewith authorized to charge payment of the necessary fees, or credit any overpayment to Deposit Account 50-0705 associated with this communication for any related purpose, including: (A DUPLICATE COPY OF THIS SHEET IS ENCLOSED)

☒ Any additional filing fees required for presentation of extra claims

☒ Any extension or petition fees.

☒ Small entity status for this application under 37 CFR §1.9 and 1.27 has been established by a verified statement previously submitted.

Respectfully Submitted:


George S. Cole, Esq.
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EXPRESS MAIL CERTIFICATE

"Express Mail" mailing label No: _____ EQ 338677704 US _____

Date of Deposit: _____ Jul. 28th, 2006 _____

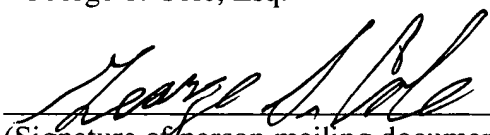
I hereby certify that the following documents:

-
- Cover letter to Examiner;
 - Copy of Office Action;
 - Response to Office Action with Deposit Account Authorization;
 - Claims Listing (changes marked);
- and,
- a copy of this Express Mail Certificate;
-

are being deposited in a single envelope with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and such envelope is addressed to:

Mail Stop Non-Fee Amendment
Attn: Examiner Blanche Wong, Art Unit 2616
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

George S. Cole, Esq.


(Signature of person mailing documents)



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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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09/878,789

06/10/2001

Brian G. Agee

1456

7590

05/02/2006

George S. Cole, Esq.
495 Seaport Court, Suite 101
Redwood City, CA 94063

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| EXAMINER |
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WONG, BLANCHE

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2616

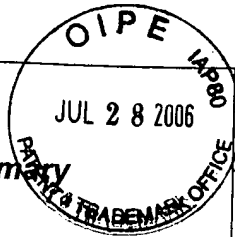
DATE MAILED: 05/02/2006



Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary



Application No.

09/878,789

Applicant(s)

AGEE ET AL.

Examiner

Blanche Wong

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-112, 115-179, 182 and 183 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 113 and 114 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 1-112,115-179,182,183** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 1, it is unclear whether claim 1 is a method of an apparatus claim. Similar problem in claims 2,41,101,108.

With regard to claim 1, line 22, "prefer" renders claim 1 vague because it is unclear whether "meeting the following criteria ..." is required or not. Similar problem in claims 2,41,101,108.

With regard to claim 1, the exact meaning of lines 28-30 is unascertainable. Applicant is requested to further clarify how to count "diversity capability means" versus subsets so that the comparison can be made: "each node in said set of nodes belonging to no more transmitting uplink or receiving uplink subsets than it has diversity capability means". Similar problem in claims 2,41,108.

Allowable Subject Matter **Best Available Copy**

3. **Claims 113 and 114** are allowed.
4. The following is an examiner's statement of reasons for allowance:

With regard to claim 113, the prior art of record fails to anticipated or make obvious a wireless electromagnetic communications network with the combination of

limitations, such network comprising "a set of nodes [with limitations as recited in claim 113] ... a LEGO adaptation element and algorithm; a network controller element and algorithm; whereby each node ... each receiving node ... each node ... [each with limitations as recited in claim 113] ... the network is designed such that substantially reciprocal symmetry exists for the uplink and downlink channels by ... [the equations provided]"

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BW

BW
April 18, 2006

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Huy D. Vu
HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600